

Message Text

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TO AMEMBASSY MANILA IMMEDIATE

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MANILA ALSO FOR DEPUTY SECRETARY

E.O. 11652: GDS

TAGS: OVIP (ROBINSON, CHARLES W.)

SUBJECT:VISIT OF DEPSEC ROBINSON: BRIEFING PAPERS -
SPRATLY ISLANDS AND REED BANK

REF: MANILA 11535

1. REFTEL IS GOOD GENERAL SUMMARY OF SPRATLY ISLANDS AND
REED BANK ISSUES. THERE ARE, HOWEVER, A NUMBER OF
ADDITIONAL POINTS OF WHICH YOU SHOULD BE AWARE.

2. REFTEL IS CORRECT IN STATING THAT WE TAKE NO POSITION
ON MERITS OF THE VARIOUS CLAIMANTS CASES CONCERNING THE
SPRATLYS. YOU SHOULD KNOW, HOWEVER, THAT AS A TECHNICAL
LEGAL MATTER THE PHILIPPINES CLAIM IS PROBABLY THE LEAST
CONVINCING OF THE LOT.

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3. THE SITUATION WITH RESPECT TO THE REED BANK IS CONSIDERABLY MORE COMPLEX. BASICALLY IT MAY BE SAID THAT WHICHEVER STATE IS CONSIDERED TO BE THE RIGHTFUL SOVEREIGN OF THE SPRATLYS WOULD HAVE A CLAIM TO REED BANK AS PART OF THE SHELF APPERTAINING TO THE SPRATLYS. IF THE RP ITSELF HAD SOVEREIGNTY OVER THE SPRATLYS, THERE WOULD PRESUMABLY BE NO ISSUE ABOUT REED BANK. BUT IF ONE OF THE OTHER CLAIMANTS TO THE SPRATLYS WERE CONSIDERED THEIR

RIGHTFUL SOVEREIGN, THE RP, AS OUTLINED BELOW, COULD STILL MAKE A PLAUSIBLE LEGAL ARGUMENT TO BE ENTITLED TO PART OR ALL OF THE REED BANK AREA. SINCE WE REGARD THE SOVEREIGNTY OF THE SPRATLYS AS DISPUTED AND SINCE THE STATUS OF THE REED BANK DEPENDS ON THAT OF THE SPRATLYS, WE TAKE THE POSITION THAT REED BANK IS ALSO DISPUTED AND LIKEWISE TAKE NO POSITION ON THE RESPECTIVE MERITS OF THE CLAIMS TO THE SHELF AREAS.

4. THE ARGUMENT SET OUT IN REFTEL THAT THE PALAWAN TRENCH INTERRUPTS THE NATURAL CONTIGUITY OF THE PHILIPPINE SHELF WE CONSIDER AS LEGALLY SUPPORTABLE BUT NOT CONCLUSIVE. THE LONG-STANDING US POSITION IN THIS AREA IS THAT CONTINENTAL SHELF BOUNDARIES BETWEEN NEIGHBORING STATES SHOULD BE DETERMINED BY AGREEMENT AND IN ACCORDANCE WITH EQUITABLE PRINCIPLES. THE OPERATIVE PROVISION OF THE 1958 GENEVA CONVENTION ON THE CONTINENTAL SHELF, ART. 6, BASICALLY SUPPORTS THIS POSITION. WE RECOGNIZE IT AS POSSIBLE THAT STATES MAY AGREE TO DISREGARD TRENCHES IN THE SHELF BETWEEN THEM, OR THAT EQUITABLE PRINCIPLES MAY SUPPORT A STATE'S DESIRE TO LEAP A NEARBY TRENCH. AN EXAMPLE OF AN AGREEMENT TO DISREGARD A TRENCH IS THAT BETWEEN NORWAY AND GREAT BRITAIN WHERE THE TRENCH FALLS JUST OFF NORWAY'S COAST. WE OURSELVES HAVE DISREGARDED TRENCHES OFF THE PACIFIC COAST, AND ARE INVOLVED CURRENTLY IN A COMPLEX DISPUTE WITH CANADA OVER THE GULF OF MAINE, IN WHICH WE ARGUE THAT EQUITABLE PRINCIPLES SHOULD BE A MAJOR DETERMINING FACTOR IN DELIMITATION OF THE SHELF.

5. ART. 6 OF THE 1958 CONVENTION PROVIDES THAT IN THE
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ABSENCE OF AN AGREEMENT BETWEEN NEIGHBORING STATES, QUOTE AND UNLESS ANOTHER BOUNDARY LINE IS JUSTIFIED BY SPECIAL CIRCUMSTANCES, THE BOUNDARY SHALL BE DETERMINED BY APPLICATION OF THE PRINCIPLE OF EQUIDISTANCE....END QUOTE. THUS, EVEN IF ANOTHER STATE WERE CONSIDERED SOVEREIGN OF THE SPRATLYS, THE RP COULD PLAUSIBLY CLAIM PART OF REED BANK ON THE BASIS OF EQUIDISTANCE OR COULD CLAIM THAT QUOTE SPECIAL CIRCUMSTANCES UNQUOTE DICTATED

AN EVEN LARGER RP SHARE. MOREOVER, SINCE THE RP IS NOT A PARTY TO THE CONVENTION, AND SINCE THE CONVENTION IN THIS REGARD IS NOT REGARDED AS BINDING CUSTOMARY INTERNATIONAL LAW, THE RP WOULD BE FREE TO TAKE AN EVEN MORE AGGRESSIVE STANCE ON THE RIGHT TO PART OF REED BANK.

6. THE POSSIBILITY THAT THERE MAY BE AGREEMENT ON A 200-MILE ECONOMIC ZONE OR THAT THE RP MIGHT UNILATERALLY DECLARE SUCH A ZONE IS A FURTHER COMPLICATING FACTOR. IF EITHER OF THESE EVENTUALITIES COMES TO PASS, THE RP

WOULD HAVE A PLAUSIBLE CLAIM TO PART OF THE REED BANK ON THE BASIS THAT IT WAS WITHIN 200 MILES, IRRESPECTIVE OF THE CONFIGURATION OF THE CONTINENTAL SHELF. AGAIN, SO LONG AS WE RECOGNIZED THAT ANOTHER STATE MAY REPEAT MAY HAVE A VALID CLAIM TO THE SPRATLYS, WE WOULD HAVE TO ANTICIPATE THE POSSIBILITY OF OVERLAPPING ECONOMIC ZONES AND A CONCOMITANT INTERNATIONAL DISPUTE ON WHICH WE WOULD PRESUMABLY BE NEUTRAL.

7. IN SHORT, THE REED BANK ISSUE IS CLOSELY TIED TO THE SPRATLYS ISSUE AND WE WISH TO TAKE NO POSITION ON EITHER. WITH RESPECT TO REED BANK, THE INTERRUPTING TRENCH ARGUMENT IS A PLAUSIBLE BUT NOT LEGALLY CONCLUSIVE COUNTER TO THE RP'S ASSERTION OF SOVEREIGNTY.

8. YOU SHOULD AVOID TAKING DEFINITIVE POSITION ON ANY OF THE LEGAL QUESTIONS INVOLVED, BECAUSE OF THEIR COMPLEXITY AND THE IMPACT THAT SUCH A POSITION MIGHT HAVE ON OUR OWN MARITIME BOUNDARY NEGOTIATIONS, AND POSSIBLE ADJUDICATIONS, WITH OUR NEIGHBORS. HABIB

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